to set fire to the staircase of one of the bungalows, which had previously been occupied by Mr. Clark, after which they all made off and disappeared.

Evidence was given by the Special Constable and by two labourers, (a) identifying the appellants and (b) as to the particular firearm with which each was armed. As to (b) there is a conflict of evidence, and this is, no doubt, the reason which prompted the prosecution to attempt to establish "joint possession" under the first charge.

Counsel for the appellants attacked the convictions upon the grounds of insufficiency and conflict of evidence. He did not in any way attack the directions of the learned trial Judge to the Assessors upon the law. In the view we take of this appeal it is unnecessary for us to go into the evidence in any detail and, indeed, as we are about to order a fresh trial for the reasons hereafter set out, it would be undesirable for us to do so.

Being in doubt as to whether a vital part of the directions of the learned trial Judge on the law were correct we desired to hear further argument as to the law and we granted an adjournment to enable the Deputy Public Prosecutor further to consider the matter. Having heard the further argument as to the law we have come to the conclusion that the directions of the learned trial Judge were not correct and that the conviction of the appellants cannot, therefore, stand.

In the course of his summing up the learned trial Judge stated the law relating to the first charge to be as follows:—

> If you apply your minds to the first charge, that is, that the three prisoners were jointly in possession of these firearms, I have to tell you that it is the law that if a number of people set out with a common purpose which involves the use of firearms, if in the course of carrying out that purpose with these firearms, some of them have physical possession of firearms, that is have firearms in their hands, and in the course of what is done they are used, then every one in that party who is there with the common intention of acting with the rest of the party is jointly in possession of the firearms which are in fact used.

That may well be an accurate statement of the law of England but it is not the law here. This Court has held, in the case of *Lee Yoon Choy & Others v. Public Prosecutor*[1] that the law as to common intention in this country is laid down in section 34 of the Penal Code. It is unnecessary for us to reiterate what has been said in the judgment in that case.

We think some confusion has arisen both in the present case and in the case just referred to from the insertion in the body of the charges of the word "jointly". There is no such specific offence as "joint possession". When two or more persons are charged with murder, the offence committed by each is none the less murder because their names are joined in one charge. The expression "joint possession" may be a convenient method of describing the state of affairs which exists when two or more persons are in possession of the same object at the same time; but when the expression is used in connection with an offence such as possession of arms under Regulation 4 it tends to obscure the necessity, in cases where more persons than one are joined in one charge, of proving as against each of them that he was in fact in possession thereof.

In our view there was no evidence in the present case from which a common intention to possess arms could reasonably be inferred.

The convictions and sentences of both appellants are, therefore, quashed and we order that both appellants be re-tried upon such charge as the Public Prosecutor may think fit to frame.

Re-trial Ordered.

PUBLIC PROSECUTOR v. RAJA

[A. Cr. J. (Spenser Wilkinson J.) March 2, 1949]

[K. L. — Criminal Appeal No. 53 of 1948]

Excise Rules, r. 92 — Possession of toddy to which water has been added — Scope of rule.

In this case the respondent was charged in that being a licensee and a person employed by the Government for the sale of toddy he had in his possession toddy to which water had been added. At the trial the learned Magistrate acquitted the respondent on the ground that the toddy was overnight toddy and not intended for sale to the public and therefore not within the scope of r. 92 of the Excise Rules which he held was meant to cover toddy which is for sale to the public.

Held: (1) the wording of r. 92 of the Excise Rules is clear and ambiguous and contained no exception in favour of overnight toddy nor of any other toddy that is not for sale to the public; (2) if the respondent was in possession of toddy to which water had been added, he was guilty of a contravention of r. 92.

[**Editorial Note:** Rule 92 of the Excise Rules, 1923 reads: "No licensee and no person employed by the Government for the sale of toddy shall have in his possession whether upon licensed premises or elsewhere any toddy to which there has been added any water, alcohol or sugar."]

Cases referred to:—

(1) *Rowland v. Public Prosecutor,* (1940) F.M.S.L.R. 16; (1940) M.L.J. 131.

(2) *Attorney-General v. Sillean,* 3 H. & C. 508.

MAGISTRATE'S CRIMINAL APPEAL.

F. G. Cooke (D. P. P.) for the appellant.

Respondent in person.

Spenser Wilkinson J. : — The only question which arose in this appeal was the extent and scope of Rule 92 of the Excise Rules under which the respondent was charged.

After setting out a passage from the judgment of Cussen J. in *Rowland v. Public Prosecutor*[1] the learned Magistrate in his ground of decision states as follows :—

> Now, I come to consider the facts of this case and the submission of the Counsel for the Defence on point of law. It is abundantly clear from the judgment of Cussen, J. that the scope and object of Rule 92 is meant to cover toddy that is for sale to the Public. I do not think that overnight toddy such as the subject matter of this case which is not intended for sale to the public as it is no longer fit for human consumption comes under the purview of Rule 92. I therefore find no *prima facie* case against the defendant. I accordingly acquitted and discharged the defendant.

In my opinion the learned Magistrate was misled by an entirely fallacious argument put forward by Counsel at the trial whereby he sought to limit the plain meaning of the words of Rule 92 by reference to the object of the rule as laid down by Cussen J. in the case above cited. Nowhere in his judgment did Cussen J. say that the scope and object of Rule 92 was to cover toddy that is for sale to the public; nor, in my opinion, did he intend to say anything of the kind. What he did say was that the general object of the rule was for the protection of the public; and his only reason for considering the general object of the rule was to decide the question whether or not *mens rea* was a necessary element in the offence created by the rule. There is abundant authority for the proposition that when considering whether a prohibition contained in a statute is absolute or not it is necessary to consider both the language and the object of the act in question. This does not, however, mean that the plain language of an act constituting an offence is necessarily to be limited to the general object for which it was passed; the plain words may, in some cases, go beyond the immediate object.

The wording of Rule 92 is clear and unambiguous and the foremost rule of construction of statutes is that where by the use of clear and unequivocal language capable of only one meaning anything is enacted by the legislature it must be enforced. If the language of a section appeared to be directly contrary to the purpose of the statute as a whole then it might well be necessary to depart from the ordinary or literally construction of the section. But "when the language is not only plain but admits but of one meaning the task of interpretation can hardly be said to arise." (See *Maxwell's Interpretation of Statutes*, 9th Edn. p. 3). With regard to Rule 92 the absolute prohibition of possession of toddy to which water has been added is in no way in conflict with the object of the section as laid down by Cussen J. Indeed such a prohibition seems to me to be a most effective way of protecting the public against the sale to them of toddy to which water has been added.

What the learned Magistrate has in fact done in this case is to read into Rule 92 a proviso or exception which is not there and which cannot possibly be implied from the words used. To quote from Pollock C.B. in *Attorney-General v. Sillean*[2] :—

> If a statute, in terms reasonably plain and clear makes what the defendants have done a punishable offence within the statute, we want not the assistance which may be derived from what eminent statesmen have said or learned jurists have written . . . we want not the decisions of American Courts to see whether the case before us is within the statute.

Rule 92 contains no exception in favour of overnight toddy nor of any other toddy that is not for sale to the public. It states quite clearly that no licensee and no person employed by the Government for the sale of toddy shall have in his possession any toddy to which water has been added. The accused in this case did have in his possession toddy to which water has been added. It has been held that it is not necessary to prove *mens rea* so that it matters not whether the accused knew that the toddy had water added to it or not. It is, therefore, abundantly clear that the accused was guilty of a contravention of Rule 92.

I, therefore, reversed the order of acquittal and directed the Magistrate to proceed with the trial of the appellant in the light of the law as above explained.

Appeal allowed.